INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	1
Statutes and regulations involved	2
Interest of the United States	2
Statement	5
Summary of argument	8
Argument	8
I. The regulation of Patent Office practice within the several States is a "necessary and proper" means for carrying into execution the power to establish and maintain a patent system	11
II. Congress has exercised its power to prescribe qualifications for Patent Office practice throughout the country without regard to local rules governing the practice of law	14
III. The regulation admitting non-lawyers to Patent Office practice and the Florida rule restricting the practice of law to members of the local bar can be accommodated without serious injury to the State's prerogatives	18
Conclusion	21
Appendix	23

CITATIONS

Cases:	
Auerbacker v. *Wood*, 142 N.J. Eq. 484, 59 A. 2d 883	19
Battelle Memorial Institute v. *Green*, 133 U.S.P.Q. 40	14, 19
Blair et al. v. *Motor Carrier Service Bureau, Inc.*, 40 Pa. D. & C. 413	17, 19
Bradwell v. *Illinois*, 83, 16 Wall. 130	19
Butterworth v. *Hoe*, 112 U.S. 50	11
Castle v. *Hayes Freight Lines*, 348 U.S. 61	18
Charleston & Car. R.R. v. *Varnville Co.*, 237 U.S. 597	15
Chicago Bar Ass'n. v. *Kellogg*, 338 Ill. App. 618, 88 N.E. 2d 519	17, 19
De Pass. v. *B. Harris Wool Co.*, 346 Mo. 1038, 144 S.W. 2d. 146	19
First National Bank v. *California*, 262 U.S. 366	15
Florida v. *Mellon*, 273 U.S. 12	18

669967—62——1

Cases—Continued — Page

Gibbons v. *Ogden*, 9 Wheat. 1 — 18
Goldsmith v. *Board of Tax Appeals*, 270 U.S. 1
Henderson v. *Mayor of New York*, 92 U.S. 259 — 15
Hill v. *Florida*, 325 U.S. 538 — 18
Hines v. *Davidowitz*, 312 U.S. 52 — 15
Johnson v. *Maryland*, 254 U.S. 51 — 15
Kearney, Petition of, 63 So. 2d 630 (Fla.) — 3
Kingsland v. *Dorsey*, 338 U.S. 318 — 12
Leslie Miller, Inc. v. *Arkansas*, 352 U.S. 187 — 18
Lockwood, In Re, 154 U.S. 116 — 19
Lyon, Matter of, 301 Mass. 30, 16 N.E. 2d 74 — 17, 19
Marshall v. *New Inventor's Club, Inc.*, 69 O.L.A. 578, 117 N.E. 2d 737 — 17
McCue, In re, 211 Cal. 57, 293 P. 47 — 19
McCulloch v. *Maryland*, 4 Wheat. 316 — 14, 15
Napier v. *Atlantic Coast Line*, 272 U.S. 605 — 19
New York County Lawyers Ass'n (Bercu), Matter of, 273 App. Div. 524, 78 N.Y.S. 2d 209, affirmed, 299 N.Y. 728, 87 N.E. 2d 451 — 17
Noble v. *Hunt*, 95 Ga. App. 804, 99 S.E. 2d 345 — 18
Penna. R.R. Co. v. *Pub. Service Comm.*, 250 U.S. 566 — 15
People ex rel. Colorado Bar Ass'n. v. *Erbaugh*, 42 Colo. 480, 94 P. 349 — 18
Plantamura, Application of, 22 Conn. Sup. 213, 166 A. 2d 859, affirmed, 149 Conn. 111, 176 A. 2d 61, certiorari denied, 369 U.S. 872 — 3
Public Service Traffic Bureau v. *Haworth Marble Co.*, 40 Ohio App. 255, 178 N.E. 703 — 19
Schroeder v. *Wheeler*, 126 Cal. App. 367, 14 P. 2d 903 — 17, 19
Schware v. *Board of Bar Examiners*, 353 U.S. 232 — 19
Sharp v. *Mida's Research Bureau*, 45 N.Y.S. 2d 690, affirmed, 267 App. Div. 980, 48 N.Y.S. 2d 799 — 17
State of Wisconsin v. *Keller*, 16 Wis. 2d 377, 114 N.W. 2d 796 — 3
United States v. *Duell*, 172 U.S. 576 — 11
Webber v. *Virginia*, 103 U.S. 344 — 15
Zenith Radio Corp. v. *Radio Corp. of America*, 121 F. Supp. 792 — 19

Constitution, Statutes and Regulations:
Constitution of the United States:
Article I, Section 8, clause 8 — 11, 23
Article I, Section 8, clause 18 — 23
Article VI, clause 2 — 23

Constitution, Statutes and Regulations—Continued

	Page
Act of Feb. 18, 1922, § 3, 42 Stat. 390, as amended, 35 U.S.C. (1946 ed.) 11	15, 16, 23
Act of July 19, 1952, 66 Stat. 795, 35 U.S.C. 31–33	15, 16, 24
5 U.S.C. 261	4
5 U.S.C. 493	4
19 U.S.C. 1641	4
26 U.S.C. 7452	4
31 U.S.C. 52	4
35 U.S.C. 31	4, 9
35 U.S.C. 32	4
35 U.S.C. 33	4
35 U.S.C. 102–103	13
35 U.S.C. 112	13
35 U.S.C. 132	13
35 U.S.C. 134	13
42 U.S.C. 406	5
45 U.S.C. 355(i)	5
46 U.S.C. 1114(b)	4
49 U.S.C. 17(12)	4
31 F.S.A. Sec. 2, Art. II	2, 33
4 C.F.R. 1.1–1.8	4
5 C.F.R. 22.405	5
5 C.F.R. 22.601	5
5 C.F.R. 36.303(a)	5
7 C.F.R 1.26	5
8 C.F.R. 6.1(d)(3)	5
8 C.F.R. 292.1–292.12	5
12 C.F.R. 263.1	5
12 C.F.R. 308.2(a)	5
18 C.F.R. 1.4(a)	5
19 C.F.R. Part 31	4
19 C.F.R. 201.12	5
20 C.F.R. 262.12(a)	5
20 C.F.R. 320.48	5
20 C.F.R. 404.971 *et seq.*	5
26 C.F.R. 701.2	4
29 C.F.R. 102.38–102.58	5
31 C.F.R. 10.1–10.94	4
37 C.F.R. 1.31	25
37 C.F.R. 1.71–1.79	13
37 C.F.R. 1.113	13
37 C.F.R. 1.115–1.127	13

Constitution, Statutes and Regulations—Continued Page

37 C.F.R. 1.191–1.198 13
37 C.F.R. 1.31 9
37 C.F.R. 1.341 ..... 9, 12, 20, 26
37 C.F.R. 1.342 29
37 C.F.R. 1.343 29
37 C.F.R. 1.344 ..... 12, 29
37 C.F.R. 1.345 30
37 C.F.R. 1.346 30
37 C.F.R. 1.347 31
37 C.F.R. 1.348 31
37 C.F.R. 1.341–1.348 4
37 C.F.R. 2.11–2.19 4
38 C.F.R. 14.626–14.663 4
43 C.F.R. 1.1–1.7 4
43 C.F.R. 161.9 4
43 C.F.R. 221.84 4
45 U.S.C. 355(i) 5
46 C.F.R. 201.26 4
49 C.F.R. 1.7–1.13 4

Miscellaneous:

111 A.L.R. 19 17
125 A.L.R. 1173 17
151 A.L.R. 781 17
74 Cong. Rec. 5724 (1931) 17
House Committee on Government Operations, 85th Cong., 1st Sess., *Survey and Study of Administrative Organization, Procedure, and Practice in the Federal Agencies, 1957* 4
H. Rep. No. 715, 69th Cong., 1st Sess. (1926) 17
H. Rep. No. 728, 71st Cong., 2d Sess. (1930) 17
Patent Attorneys and Agents Available to Represent Inventors Before the U.S. Patent Office (U.S. Department of Commerce, Patent Office, G.P.O. Oct. 1, 1961) 16
Rules of the General Services Administration Board of Contract Appeals:
Rule 14 5
S. Rep. No. 626, 71st Cong., 2d Sess (1930) 17
Survey of the Legal Profession: Standards of Admission for Practice Before Federal Administrative Agencies, Prentice-Hall, Inc., 1953 4
United States Patent Office, Official Gazette, Vol. 784, No. 2, p. 365, November 13, 1962 3

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 322

ALEXANDER T. SPERRY, PETITIONER

v.

STATE OF FLORIDA EX REL. THE FLORIDA BAR

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINION BELOW

The opinion of the Supreme Court of the State of Florida (R. 51–68) is reported at 140 So. 2d 587.

JURISDICTION

The judgment of the Supreme Court of the State of Florida was entered on April 4, 1962 (R. 67–68). A petition for rehearing (R. 31–49) was denied on May 15, 1962 (R. 51). The petition for a writ of certiorari was filed on August 10, 1962, and was granted on October 22, 1962 (R. 69).

QUESTION PRESENTED

Petitioner, a non-lawyer, has been authorized by the Commissioner of Patents to practice before the

United States Patent Office. As part of that practice, petitioner has, for many years, represented patent applicants, prepared and prosecuted their applications, and advised them in connection with their applications, in the State of Florida. The court below enjoined these activities performed in Florida on the ground that they constitute the practice of law, which, under the rules, is restricted to members of the Florida bar.

The question presented is whether a State may prohibit such Patent Office practice by federally licensed lay practitioners when Congress has authorized the Commissioner to regulate all phases of the practice and has expressly authorized him to license qualified non-lawyers therefor.

STATUTES AND REGULATIONS INVOLVED

The statutes relating to the authority of the Patent Office to make regulations governing the practice of non-lawyers are set forth in the Appendix, *infra*, pp. 23–25.

The regulations of the Patent Office governing the admission and qualifications of practitioners before it are reproduced in the Appendix, *infra*, at pp. 25–33.

Section 2 of Article II of the Integration Rule of The Florida Bar appears in the Appendix, *infra*, at p. 33.

INTEREST OF THE UNITED STATES

The decision below threatens to interfere with the operation of various departments and agencies of the United States. The immediate impact, of course, would be felt by the Patent Office, but numerous other governmental functions are also affected.

1. There are currently more than 190,000 patent applications pending in the Patent Office. United States Patent Office, Official Gazette, Vol. 784, No. 2, p. 365, November 13, 1962. As of November, 1962, the register of the Patent Office indicated that, of the 7,544 persons registered to practice before it, 1,801 were not members of any bar and 1,687 were not members of the bar of the State in which they were practicing.[1] Thus, 3,488 practitioners would be immediately affected by the ruling in the instant case and others like it, if it were to be followed. See *Petition of Kearney*, 63 So. 2d 630 (Fla.); cf. *State of Wisconsin* v. *Keller*, 16 Wis. 2d 377, 114 N.W. 2d 796, 801.

It is worth noting that some of these registered lay practitioners are presently employed in the "patent sections" of the several Military Services and that they perform duties within the territorial jurisdiction of the several States. If the ruling here reaches them, the national defense establishment will be affected.

2. The impact of the decision on Patent Office practice is reason enough for concern. But the implications of the ruling are more far-reaching. There are a host of federal agencies which admit non-lawyers to

[1] Attorneys who are not members of the bar of the State in which they are practicing might face some difficulties in attempting to avail themselves of that State's reciprocity provisions for admission to its bar. Cf. *Application* of *Plantamura*, 22 Conn. Sup. 213, 166 A. 2d 859, affirmed, 149 Conn. 111, 176 A. 2d 61, certiorari denied, 369 U.S. 872.

their practice.[2] Those most directly affected include the Department of Commerce, parent department of the Patent Office, in its operations with respect to both patents and trademarks, 35 U.S.C. 31–33; 37 C.F.R. 1.341–1.348, 2.11–2.19; the Treasury Department (Internal Revenue), 5 U.S.C. 261; 31 C.F.R. 10.1–10.94 (Treasury Dept. Circular 230);[3] the United States Tax Court, 26 U.S.C. 7452; 26 C.F.R. 701.2; the Interstate Commerce Commission, 49 U.S.C. 17 (12); 49 C.F.R. 1.7–1.13; the Federal Maritime Commission, 46 U.S.C. 1114(b); 46 C.F.R. 201.26; the General Accounting Office, 31 U.S.C. 52; 4 C.F.R. 1.1–1.8; and the Veterans Administration, 38 C.F.R. 14.626–14.663.[4]

Although there is no group of regular practitioners connected with their operations, certain other governmental agencies which recognize non-lawyers might be affected. Among these are: the Department of Justice (Immigration and Naturalization), 8 C.F.R.

[2] Two significant studies have been made in this area. While they are not presently up to date, they nevertheless present an interesting picture of lay practice in the federal government. See House Committee on Government Operations, 85th Cong., 1st Sess., *Survey and Study of Administrative Organization, Procedure, and Practice in the Federal Agencies, 1957*; *Survey of the Legal Profession: Standards of Admission for Practice Before Federal Administrative Agencies*, Prentice-Hall, Inc., 1953.

[3] And, with respect to the licensing of customhouse brokers, see 19 U.S.C. 1641; 19 C.F.R. Part 31.

[4] Until 1954, the Department of the Interior, Bureau of Land Management, authorized laymen to practice before it. The present regulations allow practice by registered attorneys and laymen authorized before 1954. 5 U.S.C. 493; 43 C.F.R. 1.1–1.7, 161.9, 221.84.

6.1(d)(3), 292.1–292.12; the Department of Health, Education, and Welfare (Social Security), 42 U.S.C. 406; 20 C.F.R. 404.971 *et seq.;* the Department of Agriculture, 7 C.F.R. 1.26; the General Services Administration, Rule 14 of the Rules of the General Services Administration Board of Contract Appeals; the United States Civil Service Commission, 5 C.F.R. 22.405, 22.601, 36.303(a); the Board of Governors of the Federal Reserve System, 12 C.F.R. 263.1; the Railroad Retirement Board, 45 U.S.C. 355(i); 20 C.F.R. 262.12(a), 320.48; the National Labor Relations Board, 29 C.F.R. 102.38–102.58; the Federal Power Commission, 18 C.F.R. 1.4(a); the Federal Deposit Insurance Corporation, 12 C.F.R. 308.2(a); and the United States Tariff Commission, 19 C.F.R. 201.12.

STATEMENT

On March 6, 1961, pursuant to respondent's petition (R. 2–4), the Florida Supreme Court directed petitioner to show cause why he should not be adjudged guilty of contempt for engaging in certain activities alleged to constitute the unauthorized practice of law (R. 5). In this response to the rule, petitioner admitted many of the factual allegations of the petition; denied others; asserted that he was a duly licensed Patent Office practitioner, whose activities were solely related to that practice and did not constitute the unauthorized practice of law within the meaning of the pertinent rule of the Florida Bar; and, finally, defended on the ground that granting the requested injunctive relief would deprive him of a livelihood

669967—62——2

and of property, without due process of law, in violation of both the Florida and United States Constitutions (R. 6–10). In a subsequent motion for summary relief, respondent withdrew the factual allegations denied by petitioner, impliedly admitted petitioner's affirmative allegations, prayed that the previously requested injunction issue forthwith, and asked the court to define the practice of law in Florida as it relates to the patent field and to determine specifically what activities in that field petitioner cannot perform (R. 11–12).

The facts thus agreed upon by the parties are as follows: Though he has been admitted to practice before the Patent Office since January 12, 1928 (R. 8), petitioner is not a member of the Florida Bar. He maintained an office in Tampa, Florida, and until the institution of these proceedings, held himself out as a "Patent Attorney." He represented clients before the United States Patent Office; had on one occasion advised a client as to the existence of a cause of action for patent infringement; had rendered opinions as to patentability; and had prepared and filed applications for letters patent and amendments thereto (R. 11, 52–53).

The Florida Supreme Court entered its opinion and judgment on April 4, 1962 (R. 13–30). Upon a petition for rehearing (R. 31–49), which it denied (R. 51), the court re-issued its original opinion (R. 51–68), deleting only reference to decisions of lower courts in Ohio which had been reversed or overruled by the Ohio Court of Appeals (See R. 19, 31, 57). The opinion held that the Florida Supreme Court

has the power to regulate the practice of law and those who engage in it (R. 53–54), and that it may enforce its authority in such matters by both contempt proceedings and injunction (R. 54–55). After analyzing in detail the elements of petitioner's practice (R. 58–62), the court determined that his activities constituted the practice of law (R. 62), and ruled that petitioner's license to practice before the Patent Office did not authorize his practice in the State of Florida (R. 65). Finally, rejecting petitioner's due process and privilege and immunity contentions (R. 67–68), the court concluded:

> * * * that the respondent, until and unless he becomes a member of the Bar of this state, should be and is permanently enjoined from the following activities in this state:
>
> 1. using the term "patent attorney" or holding himself out to be an attorney at law in this state in any field or phase of the law (we recognize that the respondent according to the record before us has already voluntarily ceased the use of the word "attorney");
>
> 2. rendering legal opinions, including opinions as to patentability or infringement on patent rights;
>
> 3. preparing, drafting and construing legal documents;
>
> 4. holding himself out, in this state, as qualified to prepare and prosecute applications for letters patent, and amendments thereto;

5. preparation and prosecution of applications for letters patent, and amendments thereto, in this state; and

6. otherwise engaging in the practice of law.

This injunction cannot and shall not in anywise be construed to affect any rights which the respondent has to practice before the Patent Office when done outside this state.

SUMMARY OF ARGUMENT

The regulation of Patent Office practice throughout the Nation is a necessary and appropriate incident to the operation of the patent system established under express constitutional mandate. The admission of qualified non-lawyers to that practice is a reasonable exercise of the regulatory power.

Congress, having constitutional power to do so, has expressly authorized the Commissioner of Patents to promulgate regulations admitting non-lawyers to Patent Office practice without regard to State rules governing the practice of law. Accordingly, the local regulation must give way where a conflict occurs.

The result, however, does not seriously interfere with the State's prerogative to police the practice of law within its borders. The activities authorized by the Patent Office license are narrowly circumscribed, and if the federal licensee keeps within the limits of his specialized field his practice will not impinge on the legitimate area of State regulation.

ARGUMENT

Congress authorized the Commissioner of Patents, subject to the approval of the Secretary of Commerce,

to "prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent Office * * *" 35 U.S.C. 31. The Commissioner accordingly promulgated rules of practice, one of which provides that "[a]ny citizen of the United States not an attorney at law who fullfills the requirements and complies with the provisions of these rules may be admitted to practice before the Patent Office and have his name entered on the register of agents." 37 C.F.R. 1.341. See also, 37 C.F.R. 1.31.

Neither party questions the authority of Congress to establish the Patent Office and regulate practice before it. Nor is the validity of the rule which permits qualified non-lawyers to practice before the Patent Office challenged. The only issue is whether the federal license of lay practitioners authorizes activities within the State of Florida which are said to constitute the practice of law.[5] But, narrow as is the area of disagreement, the breadth of the injunction issued by the court below unfortunately precludes the normal accommodation between the federal and state regulations. Indeed, the decision below bars even the "preparation and prosecution of applications for letters patent, and amendment thereto" by non-members of the local bar—services which, in our view, licensed Patent Office practitioners are

[5] The petition for certiorari does not challenge the Florida court's holding that petitioner's Patent Office practice, conducted within that State, constitutes the practice of law in derogation of local rules. We accordingly accept that determination here.

clearly entitled to perform. The result is a clear conflict which must be resolved.

The holding of the Florida Supreme Court is apparently that Congress lacks constitutional power to authorize Patent Office practitioners who are nonmembers of the local bar to perform any act which, in the eyes of the State, amounts to the practice of law. Here, the respondent does not go so far. The Florida Bar seems to concede that the federal regulation might override contrary local rules if Congress had wished it so, but argues that Congress has not sufficiently expressed its intent to accomplish this supersession.

There are, then, two questions presented on this record: (1) Whether Congress could constitutionally authorize Patent Office practice in the several states by lay practitioners, in derogation of local rules governing the practice of law; and (2) whether, having the power, Congress has in fact exercised it.

As a practical matter, much the same considerations govern both questions. Thus, a showing that "practice before the Patent Office" necessarily includes activities performed within the territory of the several states, and not merely appearance before the federal agency at the seat of government, probably resolves both issues. On that factual assumption, regulation of patent practice in the States is "necessary and proper" legislation in furtherance of the express power to establish a patent system, which, of course, supersedes conflicting state law under the Supremacy Clause. And, by the same token, the necessity for regulating patent practice outside the federal en-

clave, as well as within it, supports the conclusion that Congress proposed to do both when it authorized the Patent Office to admit non-lawyers to the practice. Nevertheless, because the questions are of different proportions, one going to the constitutional power of Congress, the other only to legislative intent, and because there are incidental considerations peculiar to each, we treat them separately.

I

THE REGULATION OF PATENT OFFICE PRACTICE WITHIN THE SEVERAL STATES IS A "NECESSARY AND PROPER" MEANS FOR CARRYING INTO EXECUTION THE POWER TO ESTABLISH AND MAINTAIN A PATENT SYSTEM

As already noted, neither the power to prescribe regulations governing practice before the Patent Office, nor the decision to admit non-lawyers to that practice, is contested here. Nor could they be. The Patent Office exists in response to the express constitutional mandate "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Art. I, Sec. 8, Cl. 8. In separating the true inventor from the copyist, as it must, the Office necessarily performs a quasi-judicial function. See *United States* v. *Duell*, 172 U.S. 576, 586–587; *Butterworth* v. *Hoe*, 112 U.S. 50, 59. While its determinations are not conclusive, they are of great importance, and the content of the patent application is often crucial. Given the obvious problems of establishing novelty, and describing it, the preparation and prosecution of the application is a

difficult undertaking, full of pitfalls. Skilled practitioners in the art are accordingly an indispensable adjunct of the patent system. And, of course, the need of intermediaries carries with it the need for appropriate rules governing admission to the practice. *Goldsmith* v. *Board of Tax Appeals*, 270 U.S. 117. To insure the integrity of the patent system and protect inventors, high standards must be, and are, required. 37 C.F.R. 1.341(c), 1.344; see *Kingsland* v. *Dorsey*, 338 U.S. 318. But, because the subject matter demands a specialist, whose qualifications are not necessarily those of the general lawyer, the Patent Office has from the beginning licensed non-lawyers as well as attorneys.

All this is clear enough. But the Florida court insists that the Patent Office regulations, valid though they are, can have no force outside the federal enclave, at least insofar as they conflict with local rules governing the practice of law. On the contrary, we submit those rules of practice may, and must, apply throughout the Nation.

The crucial fact is that Patent Office practice is largely conducted outside the District of Columbia, and necessarily so. The practice is not confined to appearances before the federal agency at the seat of government. We have already noted that the patent application is the crucial document in obtaining a patent, and that its preparation is a difficult task. It is often at this stage that the practitioner performs his most valuable services. However, these services, including the formulation of the specification and the claims made for the invention, see

35 U.S.C. 112; 37 C.F.R. 1.71–1.79, are joint undertakings between agent and client, requiring close collaboration between the two. Nor does the need for mutual consultation begin or end with the preparation of the application. Initially, the inventor divulges his invention to the agent, and asks an opinion whether it appears to have patentable novelty. See 35 U.S.C. 102–103. The results of a "preliminary search" of the Patent Office records are then discussed; copies of prior patents in the area are examined; the two participants then decide whether to pursue the matter by filing a formal application. Later, amendments may be appropriate. See 35 U.S.C. 132; 37 C.F.R. 1.115–1.127. Here, again, inventor and agent must work together. Finally, the application may be rejected, see 35 U.S.C. 132; 37 C.F.R. 1.113, and the two will confer once more on the question of appeal to the Board of Patent Appeals. See 35 U.S.C. 134; 37 C.F.R. 1.191–1.198. We need not labor the evident advantages of face-to-face consultation in this process. Yet, if all inventors are to have an opportunity to enjoy these benefits, there must be local practitioners throughout the Nation, for, obviously, most inventors do not live in Washington.

It may be suggested that the inventor who does not wish to handle his application by mail through a Washington practitioner, or travel the distance himself, may procure the services of a registered patent practitioner who is also a member of the local bar. But this is to say that the States may ultimately override a federal determination that fulfillment of the functions of the Patent Office is aided by licensing

669967—62——3

skilled non-lawyers. Thus, if Florida's rule were followed in the other 49 States, the patent agent would be driven from the scene, except, perhaps, in the District of Columbia.*

The short of it is that Congress has, and always has had, constitutional power to regulate Patent Office practice throughout the country and to permit qualified laymen to engage in that practice, wherever they may reside. The means are "appropriate" and "plainly adapted" to a legitimate end which is within the scope of the Constitution. Nothing more is required. *McCulloch* v. *Maryland*, 4 Wheat. 316, 421.

II

CONGRESS HAS EXERCISED ITS POWER TO PRESCRIBE QUALIFICATIONS FOR PATENT OFFICE PRACTICE THROUGHOUT THE COUNTRY WITHOUT REGARD TO LOCAL RULES GOVERNING THE PRACTICE OF LAW

It may well be that the existence of federal power of itself ousts State jurisdiction and bars all State

---

*The Ohio Court of Appeals recently stated the point in *Battelle Memorial Institute* v. *Green*, 133 U.S.P.Q. 49, 54:

> Were the courts of each state to control practice before the United States Patent Office, thus usurping a right to control that which they cannot authorize in the first instance, by considering it to constitute the practice of law within their state; then the courts of the 50 states by ignoring the provisions of Article VI of the United States Constitution, supra, could render the provisions of Congress in regard to practice before the Patent Office as enacted under the provisions of Article I, Section 8, of the United States Constitution, supra, a nullity.

Of course, there is no constitutional requirement that the Patent Office be in the District of Columbia or that the conduct of its hearings be centralized in a single location.

regulation in this area. Cf. *McCulloch* v. *Maryland, supra; Henderson* v. *Mayor of New York*, 92 U.S. 259; *Webber* v. *Virginia*, 103 U.S. 344; *First National Bank* v. *California*, 262 U.S. 366. But, in the circumstances, we do not rely on the doctrine of exclusive powers. Nor need we even invoke the preemption principle announced in cases where Congress, having evinced its purpose to fully "occupy" the field, had not, in fact, done so. See, *e.g., Charleston & Car. R.R.* v. *Varnville Co.*, 237 U.S. 597; *Penna. R.R. Co.* v. *Pub. Service Comm.*, 250 U.S. 566; *Napier* v. *Atlantic Coast Line*, 272 U.S. 605; *Hines* v. *Davidowitz*, 312 U.S. 52; cf. *Johnson* v. *Maryland*, 254 U.S. 51, 57. For, under the ruling below, there is a clear and unavoidable conflict between the federal regulation, expressly authorized by Congress, and the local rule of practice, as interpreted by the highest court of the State.

As we have already shown, Patent Office practice necessarily includes many acts performed within the jurisdiction of the several States. It follows that in 1922,[7] and again in 1952,[8] when Congress provided for regulations prescribing qualifications for that practice, it must have intended that they should be effective throughout the country. Knowing, as it must

[7] Act of February 18, 1922, § 3, 42 Stat. 390, as amended, 35 U.S.C. (1946 ed.) 11, which, in pertinent part, empowers the Commissioner of Patents to: "prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing applicants or other parties before his office * * *."

[8] Act of July 19, 1952, 66 Stat. 795–796, 35 U.S.C. 31–33, which, so far as here relevant, traces the language of the 1922 Act almost verbatim.

have, that the great majority of Patent Office practitioners were in fact residing and practicing outside the federal enclave,[9] Congress obviously meant that the rules about to be promulgated were to apply to them. So much is beyond dispute.

It is suggested, however, that Congress did not expressly authorize the Commissioner of Patents to promulgate regulations which would conflict with State rules governing the practice of law. Yet, the Acts of 1922 and 1952 unmistakably contemplate that non-lawyers will be admitted to Patent Office practice. Both enactments empower the Commissioner in terms to prescribe regulations governing the recognition and conduct of *agents*, attorneys, or *other persons* representing applicants or other parties before the Patent Office. Is it to be supposed that Congress was ignorant of the common State requirement that only locally admitted members of the bar be permitted to practice law? Obviously not. Or did Congress overlook the possibility that some part of Patent Office practice might, in some States, be deemed to constitute the practice of law? The evidence to the contrary is overwhelming.

Long before 1952, when Congress last authorized the Patent Office to license non-lawyers, the issue had been agitated. There were State court decisions look-

[9] The most current published list of practitioners licensed by the Patent Office and available to the general public shows that all but about 750 out of a total of about 6,000 are non-residents of the District of Columbia. *Patent Attorneys and Agents Available to Represent Inventors Before the U.S. Patent Office* (U.S. Department of Commerce, Patent Office, G.P.O. Oct. 1, 1961). Similar lists have been published since 1897.

ing both ways on the question whether the local practice of agents licenced by federal bodies violated State practice of law rules. Compare, *e.g.*, *Matter of Lyon*, 301 Mass. 30, 35–36, 16 N.E. 2d 74, 77, and *Blair et al. v. Motor Carrier Service Bureau, Inc.*, 40 Pa. D. & C. 413, 426–428, with *Matter of New York County Lawyers Ass'n (Bercu)*, 273 App. Div. 524, 78 N.Y.S. 2d, 209, affirmed, 299 N.Y. 728, 87 N.E. 2d 451. See 111 A.L.R. 19 (1937), supplemented in 125 A.L.R. 1173 and 151 A.L.R. 781. Certainly, Congress knew that the same conflict had already arisen and would probably recur in connection with Patent Office practitioners. Compare *Schroeder v. Wheeler*, 126 Cal. App. 367, 14 P. 2d 903, and *Sharp v. Mida's Research Bureau*, 45 N.Y.S. 2d 690, affirmed, 267 App. Div. 980, 48 N.Y.S. 2d 799, with *Chicago Bar Ass'n v. Kellogg*, 338 Ill. App. 618, 88 N.E. 2d 519, and *Marshall v. New Inventor's Club, Inc.*, 69 O.L.A. 578, 117 N.E. 2d 737. The best proof of congressional focusing on the problem is the fact that, with particular reference to Patent Office practice, committees of the Congress had considered, and rejected, proposals to require admission to the local bar as a prerequisite qualification. See H. Rep. No. 715, 69th Cong., 1st Sess. 1926); H. Rep. No. 728, 71st Cong., 2d Sess. (1930); S. Rep. No. 626, 71st Cong., 2d Sess. (1930); 74 Cong. Rec. 5724 (1931). The inference is plain that Congress intended the Commissioner's regulations to prevail, superseding contrary local rules where necessary.

Given clear constitutional power to override state regulation, and a congressional purpose to do so,

there can be no debate about the resolution of the conflict. Under the Supremacy Clause, the local rule must give away. *Gibbons* v. *Ogden,* 9 Wheat. 1; *Florida* v. *Mellon,* 273 U.S. 12, 17; *Hill* v. *Florida,* 325 U.S. 538, 542; *Castle* v. *Hayes Freight Lines,* 348 U.S. 61; *Leslie Miller, Inc.* v. *Arkansas,* 352 U.S. 187, 189–190.

III

THE REGULATION ADMITTING NON-LAWYERS TO PATENT OFFICE PRACTICE AND THE FLORIDA RULE RESTRICTING THE PRACTICE OF LAW TO MEMBERS OF THE LOCAL BAR CAN BE ACCOMMODATED WITHOUT SERIOUS INJURY TO THE STATE'S PREROGATIVES

While the existence of federal power and the exercise of that power doubtless resolve the issue, we think it appropriate to point out that the decision we advocate will not impair State regulation of the practice of law. There is, indeed, no serious obstacle to working out a *modus vivendi* which recognizes the legitimate interests of both sovereigns. We note that most of the States have found it possible to work out a satisfactory accommodation between federal regulations admitting lay practitioners to a specialized practice and their own rules prohibiting the practice of law by non-lawyers.

Sometimes, the apparent conflict has been avoided by concluding that the activities of the practitioners licensed by the federal agency do not constitute the practice of law. See, *e.g., People ex rel. Colorado Bar Ass'n* v. *Erbaugh,* 42 Colo. 480, 94 P. 349; *Noble v. Hunt,* 95 Ga. App. 804, 809, 99 S.E. 2d 345, 348;

Schroeder v. *Wheeler, supra.* More often, state courts have reached the same result simply by deferring to the federal license, provided those who held it remained within its reasonable bounds. See, *e.g., In re McCue,* 211 Cal. 57, 66, 293 P. 47, 51; *Blair et al.* v. *Motor Carrier Bureau, Inc., supra; Public Service Traffic Bureau* v. *Haworth Marble Co.,* 40 Ohio App. 255, 178 N.E. 703; *De Pass* v. *B. Harris Wool Co.,* 346 Mo. 1038, 144 S.W. 2d 146; *Auerbacher* v. *Wood,* 142 N. J. Eq. 484, 59 A. 2d 863; *Battelle Memorial Institute* v. *Green, supra;* cf. *Matter of Lyon, supra.* But, whatever the grounds, the state courts have widely concluded that permitting the restricted practice involved does not jeopardize effective State control over the practive of law.

So, here, recognizing the right of Patent Office practitioners to carry on their profession within the State will not create serious problems. The Patent Office license does not purport to confer a privilege to engage in the general practice of law. See *Zenith Radio Corp.* v. *Radio Corp. of America,* 121 F. Supp. 792, 794 (D. Del.); *Chicago Bar Ass'n* v. *Kellogg, supra.* Hence, there is not involved here any question as to the State's prerogative to police its own attorneys, and those who would usurp that title without meeting local requirements. *Bradwell* v. *Illinois,* 16 Wall. 130, 138–139; *In re Lockwood,* 154 U.S. 116; *Schware* v. *Board of Bar Examiners,* 353 U.S. 232, 239. The area affected is very narrow. And, even within those boundaries, the permissible

activities are circumscribed. The Patent Office practitioner is licensed only to advise on matters before the Office, and to prepare and prosecute patent applications. It can be of no legitimate concern to Florida that he does some of these things within her boundaries. Nor should the State complain because the patent practitioner holds himself out as qualified to perform his specialized work, so long as he properly describes the scope of his license.

We have already recited the injunction issued by the court below (*supra*, pp. 7–8). Because it attempts to bar petitioner from all Patent Office practice within the State, it is clearly too broad. Thus, paragraphs 4 and 5 of the order, which enjoin petitioner from preparing and prosecuting patent applications and holding himself out as licensed to do that work, are wholly improper. Likewise, paragraph 2 is invalid on its face insofar as it purports to enjoin rendering "opinions as to patentability." While, as one licensed before 1938, petitioner is entitled to the designation "patent attorney," see 37 C.F.R. 1.341(b) (Note), paragraph 1 of the injunction is apparently mooted by petitioner's voluntary abandonment of the title. The remaining provisions of the order are probably unexceptionable, if understood as permitting the Patent Office practitioner to do what is necessary and proper under his license, without straying beyond his special qualifications.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be vacated and the cause remanded to the Florida Supreme Court with instructions to modify its injunction, if any injunction be deemed appropriate, so as to permit petitioner to engage in Patent Office practice within the State to the full extent of his license.

ARCHIBALD COX,
Solicitor General.

JOSEPH D. GUILFOYLE,
Acting Assistant Attorney General.

LOUIS F. CLAIBORNE,
Assistant to the Solicitor General.

MORTON HOLLANDER,
DAVID J. MCCARTHY, JR.,
Attorneys.

DECEMBER 1962.

APPENDIX

Constitution of the United States:

> Art. I, Sec. 8, cl. 8. The Congress shall have Power * * * To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.
>
> Art. I, Sec. 8, cl. 18. The Congress shall have Power * * * To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.
>
> Art. VI, cl. 2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Act of Feb. 18, 1922, Section 3, 42 Stat. 390, as amended, 35 U.S.C. (1946 ed.) 11:

> The Commissioner of Patents, subject to the approval of the Secretary of Commerce, may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing applicants or other parties before his office, and may require of such persons, agents, or attorneys, before being recognized as representatives of applicants or other

persons, that they shall show that they are of good moral character and in good repute, are possessed of the necessary qualifications to enable them to render to applicants or other persons valuable service, and are likewise competent to advise and assist applicants or other persons in the presentation or prosecution of their applications or other business before the Office. The Commissioner of Patents may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before his office any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who refuses to comply with the said rules and regulations, or who shall, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the office, by word, circular, letter, or by advertising. The reasons for any such suspension or exclusion shall be duly recorded. The action of the commissioner may be reviewed upon the petition of the person so refused recognition or so suspended or excluded by the district court of the United States for the District of Columbia under such conditions and upon such proceedings as the said court may by its rules determine.

Act of July 19, 1952, 66 Stat. 795, 35 U.S.C. 31–33:

The Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they

are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.

The Commissioner may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 31 of this title, or who shall, by word, circular, letter or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Commissioner upon the petition of the person so refused recognition or so suspended or excluded.

Whoever, not being recognized to practice before the Patent Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than $1,000 for each offense.

---

37 C.F.R. §§ 1.31, 1.341–1.348:

§ 1.31. Applicants may be represented by an attorney or agent. An applicant for patent may file and prosecute his own case, or he may be represented by an attorney or agent author-

ized to practice before the Patent Office in patent cases. The Patent Office cannot aid in the selection of an attorney or agent.

§ 1.341. Registration of attorneys and agents. A register of attorneys and a register of agents are kept in the Patent Office on which are entered the names of all persons recognized as entitled to represent applicants before the Patent Office in the preparation and prosecution of applications for patent. Registration in the Patent Office under the provisions of the regulations in this part shall only entitle the persons registered to practice before the Patent Office.

(a) *Attorneys at law.* Any attorney at law in good standing admitted to practice before any United States Court or the highest court of any State or Territory of the United States who fulfills the requirements and complies with the provisions of these rules may be admitted to practice before the Patent Office and have his name entered on the register of attorneys.

(b) *Agents.* Any citizen of the United States not an attorney at law who fulfills the requirements and complies with the provisions of these rules may be admitted to practice before the Patent Office and have his name entered on the register of agents.

NOTE: All persons registered prior to November 15, 1938, were registered as attorneys, whether they were attorneys at law or not, and such registrations have not been changed.

(c) *Requirements for registration.* No person will be admitted to practice and registered unless he shall apply to the Commissioner of Patents in writing on a prescribed form supplied by the Commissioner and furnish all requested information and material; and shall establish to the satisfaction of the Commissioner that he is of good moral character and

of good repute and possessed of the legal and scientific and technical qualifications necessary to enable him to render applicants for patents valuable service, and is otherwise competent to advise and assist them in the presentation and prosecution of their applications before the Patent Office. In order that the Commissioner may determine whether a person seeking to have his name placed upon either of the registers has the qualifications specified, satisfactory proof of good moral character and repute, and of sufficient basic training in scientific and technical matters must be submitted and an examination which is held from time to time must be taken and passed. The taking of an examination may be waived in the case of any person who has actively served for four years in the examining corps of the Patent Office.

(d) *Registration of firms.* Any firm, the individual members of which are each registered on the register of attorneys, may have its name entered upon the register of attorneys. Any firm, one of the individual members of which is registered on the register of agents and each of the remaining individual members are registered either on the register of attorneys or the register of agents, may have its name entered on the register of agents. If the membership of the firm is changed, application must be made for registration of the firm as changed.

(e) *Foreign patent attorneys and agents.* Any foreign patent attorney or agent not a resident of the United States who shall file proof to the satisfaction of the Commissioner that he is registered and in good standing before the patent office of the country in which he resides and practices, and is possessed of the qualifications stated in paragraph (c) of this section, may be registered on the register of agents as entitled to represent applicants located in such country before the United States

Patent Office in the presentation and prosecution of applications: *Provided,* That the patent office of such country allows substantially reciprocal privileges to those admitted to practice before the United States Patent Office. Such registration shall continue only during the period that the conditions specified obtain.

(f) *Government employees.* Officers and employees of the United States who are disqualified by statute (18 U.S.C. 281) from practicing as attorneys or agents in proceedings or other matters before Government departments or agencies, may not be registered, and if any registered attorney or agent becomes such an officer or employee, his name on the register shall be endorsed as inactive during the period of such employment, but officers or employees whose official duties require the preparation and prosecution of applications for patent may be registered (on compliance with the regulations in this part) or recognized to practice, to the extent necessary to carry out their official duties.

(g) *Former examiners.* No person who has served in the examining corps of the Patent Office will be registered after termination of his services, nor, if registered before such service, be reinstated, unless he undertakes (1) not to prosecute or aid in any manner in the prosecution of any application pending in any examining division in which he served, on the date he left said division; and (2) not to prepare or prosecute nor to assist in any manner in the preparation or prosecution of any application of another filed within two years after the date he left such division, and assigned to such division, without the specific authorization of the Commissioner. Associated and related classes in other divisions may be required to be included in the undertaking or designated classes may be excluded. In case application for registration or reinstatement is made after resignation from the Office, the ap-

plicant will not be registered, or reinstated, if he has prepared or prosecuted, or assisted in the preparation or prosecution of any such application as indicated in this paragraph.

(h) *Oath and registration fee.* Before his name may be entered on the register of attorneys or on the register of agents, every applicant for registration must, after his application is approved, subscribe and swear to an oath prescribed by the Commissioner of Patents and pay the prescribed registration fee. (See §1.21.)

(i) *Committee on Enrollment.* The Commissioner may establish a Committee on Enrollment to receive and act upon applications for registration to practice before the Patent Office, to conduct and supervise the examinations provided for in paragraph (c) of this section, to maintain the registers and to perform such other duties in connection with enrollment and recognition of attorneys and agents as may be necessary; or such functions may be performed by designated officials of the Patent Office. Any action of such committee or official may be reviewed by the Commissioner.

§ 1.342. Limited recognition. Any person not registered and not entitled to be recognized under § 1.341 as an attorney or agent to represent applicants generally may, upon a showing of circumstances which render it necessary or justifiable, be recognized by the Commissioner to prosecute as attorney or agent a specified application or applications, but this limited recognition shall not extend further than the application or applications specified.

§ 1.343. Persons not registered or recognized. No person or firm not registered or specifically recognized as provided in § 1.342 will be permitted to prosecute applications of others before the Patent Office.

§ 1.344. Professional conduct. Attorneys and agents appearing before the Patent Office

must conform to the standards of ethical and professional conduct generally applicable to attorneys before the courts of the United States.

§ 1.345. Advertising. (a) The use of advertising, circulars, letters, cards, and similar material to solicit patent business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Patent Office or may be suspended, excluded or disbarred from further practice.

(b) The use of simple professional letterheads, calling cards, or office signs, simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends, and insertion of listings in common form (not display) in a classified telephone or city directory, and listings and professional cards with biographical data in standard professional directories shall not be considered a violation of this rule.

(c) No agent shall, in any material specified in paragraph (b) of this section or in papers filed in the Patent Office, represent himself to be an attorney, solicitor or lawyer.

§ 1.346. Signature and certificate of attorney. Every paper filed by an attorney or agent representing an applicant or party to a proceeding in the Patent Office must bear the signature of such attorney or agent, except papers which are required to be signed by the applicant or party in person (such as the application itself and affidavits required of applicants). The signature of an attorney or agent to a paper filed by him, or the filing or presentation of any paper filed by him, or the filing or presentation of any paper by him, constitutes a certificate that the paper has been read; that its filing is authorized; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for

delay. When an applicant or party is represented by a registered firm, such papers must carry the signature of the firm, or the signature of an individual member of the firm or an individual registered attorney or agent employed by the firm and duly authorized to sign on behalf of the firm in addition to the firm name, and the certification constituted by the signing or presentation of the paper shall be a certification by and on behalf of the firm and by the individual.

§ 1.347. Removing names from registers. Attorneys, agents, and firms, registered to practice before the Patent Office, should notify the Office of any change of address for entry on the register, by letter separate from any notice of change of address filed in individual applications. The Office may address a letter to any person or firm on the registers, at the address of which separate notice for the register was last received, for the purpose of ascertaining whether such person or firm desires to remain on the register. The name of any person or firm failing to reply and give the information requested within a time limit specified will be removed from the register, and the names so removed published in the Official Gazette. Any name so removed may be reinstated, either on the register of attorneys or the register of agents, as may be appropriate.

§ 1.348. Suspension or disbarment proceedings. Except as otherwise provided, proceedings for suspension, disbarment, or exclusion from practice are before a Commissioner.

(a) *Investigating and prosecuting officer.* The duties of investigation, preparing charges, collecting and presenting testimony, and presenting a case for suspension, exclusion from practice or disbarment shall be performed by the Solicitor of the Patent Office or, at his direction, by a designated law examiner or other person, and neither the Solicitor nor such law examiner or other person shall participate in

any manner in the decision of the case. If, upon investigation of a complaint or other information concerning an attorney or agent, it shall appear to the Solicitor that grounds for suspension, exclusion from practice, or disbarment exist, he shall prepare and forward the necessary notice and statement.

(b) *Notice of proceedings.* Proceedings for suspension or disbarment shall be instituted by the Solicitor by mailing to, or otherwise serving on, the respondent a notice of such proceeding with a statement of the charges against him, at the same time forwarding a copy to the Commissioner. It shall be the duty of the respondent to answer the charges as specified in paragraph (c) of this section.

(c) *Answer.* The respondent's answer shall be filed in writing with the Commissioner within thirty days from the time the notice is served on the respondent, or within such extension of time as may be allowed by the Commissioner for good cause shown. The answer shall be under oath. Failure to answer within the time allowed will be taken as an admission of the charges. The respondent in his answer should specifically admit or deny every material allegation of fact in the statement of charges; every allegation not denied shall be deemed admitted, unless the respondent states that he has no knowledge thereof sufficient to form a belief, which statement shall be considered a denial. Any special matters of defense shall be stated affirmatively in the answer. False statements in the answer may be made the basis of supplemental charges.

(d) *Hearing.* (1) Unless the Commissioner finds the answer sufficient to dispose of the charges, he will set the case for hearing before him, notifying the respondent and the Solicitor of the place, day and time of commencement of the hearing. Evidence as to the matters in issue may be submitted at the hearing, the testimony

of witnesses being presented orally, under oath and reported.

(2) The hearing may be advanced and continued by the Commissioner, as far as may be deemed convenient and proper.

(3) Depositions for use at the hearing in lieu of personal appearance of witnesses may be taken by either the Solicitor or the respondent on application to and with the written consent of the Commissioner within such times and under such conditions as the Commissioner may prescribe.

(e) *Hearing officer.* The Commissioner may, in his discretion, delegate the conduct of the hearing to a hearing or trial examiner who shall be the presiding officer and who shall make a recommended decision.

(f) *Administrative Procedure Act.* Proceedings shall be governed, in matters not specially set forth herein, by the provisions of the Administrative Procedure Act, 60 Stat. 237; 5 U.S.C. 1001–1011, which may be applicable.

Section 2, Article II, of the Integration Rule of The Florida Bar, 31 F.S.A.:

> No person shall engage in any way in the practice of law in this state unless such person is an active member of The Florida Bar in good standing except that a practicing attorney of another state, in good standing, who has professional business in a court of record of this state may, upon motion, be permitted to practice for the purpose of such business only, when it is made to appear that he has associated and appearing with him in such business an active member of The Florida Bar.

U.S. GOVERNMENT PRINTING OFFICE 1982